

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

_____)
KENNETH M. WHITE and)
MANDY DIAS,)
)
Plaintiffs)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)
_____)

DEFENDANT'S MOTION IN LIMINE

Defendants Eric Madonna and the City of Fall River, by their attorney, move in limine to exclude from evidence the plaintiff's following proposed exhibits:

12. Transcripts of Magistrate's Hearing, Fall River District Court, September-October 2002, in the matter of Mandy Dias vs. Eric Madonna and another, and Kenneth White vs. Eric Madonna and another.

In support of this motion, defendants submit the accompanying Memorandum In Support.

Respectfully Submitted,
Eric Madonna and
The City of Fall River
By their Attorney,

Gary P. Howayeck, Esq.
1 Government Center
Fall River, MA 02720
BBO# 630053
(508) 676-6666 Phone
(508) 674-3610 Fax

November 20, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS,)
)
Plaintiffs)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION IN LIMINE

Defendants submit this memorandum in support of their motion to bar plaintiffs Kenneth M. White and Mandy Dias from making any presentation or reference to the jury regarding the following proposed exhibit:

12. Transcripts of Magistrate's Hearing, Fall River District Court, September-October 2002, in the matter of Mandy Dias vs. Eric Madonna and another, and Kenneth White vs. Eric Madonna and another.

The basis of this motion is Federal Rules of Evidence.

Defendants anticipate that the plaintiffs Kenneth M. White and Mandy Dias will offer evidence regarding the transcript of the above-described Magistrate's Hearing. See Joint Pre-Trial Memorandum, section on Plaintiff's Exhibits. This information is hearsay and should not be admitted.

The grounds for exclusion of the said evidence are as follows:

1. The defendant's take the position that the transcript is inadmissible hearsay under Fed. R. Evid. 801.
 - a. The statements contained in the Magistrate's hearing were made out of court in a hearing different from the present and will likely be used to prove truth of the assertions made.
 - b. Some of the witnesses testifying at the Magistrate hearing are not witnesses in this trial.
 - c. Though the plaintiffs may try to admit the said evidence under Fed. R. Evid. 801(d)(2) as a statement by a party opponent the defense would like to note that the document is incomplete (missing a full day of hearing) and therefore not a true account of the entire hearing.
2. Additionally, the Magistrate hearing involved different issues and different parties involving criminal complaints and not civil right actions.
 - a. The City of Fall River was not a defendant or represented at the Magistrate hearing.

In view of the inadmissibility of this hearsay information and the prejudice to the defendants that would result if it were presented to the jury, defendants submit that this motion be granted and that plaintiffs Kenneth M. White and Mandy Dias be barred from raising in front of the jury any evidence regarding the transcripts of Magistrate's Hearing, Fall River District Court, September-October 2002, in the matter of Mandy Dias vs. Eric Madonna and another, and Kenneth White vs. Eric Madonna and another.

Respectfully Submitted,
Eric Madonna and
The City of Fall River

By their Attorney,

Gary P. Howayeck, Esq.
1 Government Center
Fall River, MA 02720
BBO# 630053
(508) 676-6666 Phone
(508) 674-3610 Fax

November 20, 2007